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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 ELK VALLEY RANCHERIA,
10 CALIFORNIA, a federally recognized Indian
tribe,

Case No.: C 05-1411 NJV

ORDER

11 Plaintiff,

12 v.

13 TIMOTHY R. GOODMAN,

14 Defendant.
15 _____/

16 Now before the Court are the Motions by Plaintiff Elk Valley Rancheria, California
17 (Plaintiff) to Dismiss Defendant Timothy R. Goodman's (Defendant) Counterclaim, Motion to
18 Strike Answer, Motion to Compel Production of Documents, Motion for Sanctions and Motion
19 for Default Judgment.

20 Plaintiff brought this action for injunctive and monetary relief against Defendant and
21 served its First Amended Complaint on May 19, 2005. Defendant filed a response entitled
22 "Defendant's Response to Complaint for Monetary Damages" on June 20, 2005.

23 On June 28, 2005, Plaintiff filed a Notice of Motion and Motion to Dismiss
24 Counterclaim; Motion to Strike Answer; and Motion to Strike Allegations Purporting to
25 Constitute a Counterclaim. On February 7, 2006, Plaintiff filed a Notice of Motion and Motion
26 to Compel Production of Documents, Motion for Sanctions, and Motion for Default Judgment.
27 No opposition or statement of non-opposition was filed.

28 Having carefully considered the parties' arguments, the relevant legal authority, and

1 having had the benefit of oral argument,

2 IT IS ORDERED THAT:

3 1. Plaintiff's MOTION TO DISMISS COUNTERCLAIM is GRANTED.

4 Plaintiff moves to dismiss the counterclaim pursuant to Federal Rules of Civil Procedure
5 Rule 12(b)(6). The dispositive issue is whether sovereign immunity bars Defendant's
6 counterclaim against Plaintiff. Generally, Indian tribes are immune from suit. Santa Clara
7 Pueblo v. Martinez, 436 U.S. 49, 58 (1978). Sovereign immunity bars suits against Indian
8 tribes absent a clear waiver by the tribe or congressional abrogation." Santa Clara Pueblo, 436
9 U.S. at 58. "A waiver of immunity must be unequivocally expressed." Id. Further, a tribe does
10 not waive its sovereign immunity from counterclaims merely by filing an action. Therefore,
11 Indian tribes possess an analogous immunity from cross-suits as from direct suits. U.S. v. U.S.
12 Fid. & Guar. Co., 309 U.S. 506, 512 (1940).

13 Here, Plaintiff is a federally recognized tribe and has not waived its sovereign immunity.
14 The fact that Plaintiff initiated this suit is irrelevant insofar as its sovereign immunity against
15 Defendant's counterclaims is concerned. As a result, the counterclaim brought against Plaintiff
16 is barred by the Tribe's sovereign immunity and is dismissed.

17 2. Plaintiff's MOTION TO STRIKE ANSWER is DENIED.

18 Plaintiff also moves to strike the answer alleging it was not filed in a timely manner.
19 This motion is brought under Federal Rules of Civil Procedure Rule 12(a) which requires that a
20 defendant "serve an answer . . . within 20 days after being served with the summons and
21 complaint." FED.R.CIV.P.12(a)(1)(A).

22 This Court construes technical rules and Defendant's answer liberally because
23 Defendant is proceeding in pro per. Plaintiff served its First Amended Complaint on May 19,
24 2005 and Defendant was required to file an answer by June 8, 2005, pursuant to Federal Rules
25 of Civil Procedure Rule 12(a)(1)(A). Defendant filed a response on June 20, 2005. It does not
26 appear that Defendant intentionally disregarded procedural rules because his answer was filed
27 less than two weeks later than the rules suggest. Defendant's answer is timely and the motion
28 to strike answer is denied.

1 3. Plaintiff's MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR
2 SANCTIONS is GRANTED IN PART and DENIED without prejudice in part.

3 Plaintiff moves to compel the production of documents pursuant to Rule 37 of the
4 Federal Rules of Civil Procedure and Local Rule 37-1. Based upon Plaintiff's moving papers
5 and the lack of response by the Defendant, the Motion to Compel the Production of Documents
6 is granted. All documents responsive to Plaintiff Elk Valley Rancheria's document demands
7 (attached as Exhibit 1 to the declaration filed in support of the motion) shall be produced
8 without objection by Defendant Timothy R. Goodman on or before April 11, 2006. The Court
9 denies at this time Plaintiff's motion for sanctions without prejudice.

10 4. Plaintiff's MOTION FOR DEFAULT JUDGMENT is DENIED without prejudice.

11 Plaintiff moves for an entry of default judgment against Defendant for lack of response
12 by Defendant to Plaintiff's Motions to Dismiss Defendant's Counterclaim, Strike Answer,
13 Compel Production of Documents and Monetary Sanctions. The Court denies Plaintiff's
14 Motion for Default Judgment without prejudice. The Court intends to address the issue of
15 sanctions and entry of default judgment at a separate Order to Show Cause Hearing to be held in
16 Eureka, California on April 11, 2006 at 1:00 p.m.

17 **IT IS SO ORDERED.**

18
19 Dated: 3/15/06

NANDOR J. VADAS
UNITED STATES MAGISTRATE
JUDGE